

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

BITMANAGEMENT SOFTWARE GMBH,

Plaintiff,

v.

THE UNITED STATES OF AMERICA,

Defendant.

Case No. 16-840 C

Senior Judge Edward J. Damich

REQUEST TO PRESENT DIRECT TESTIMONY IN WRITTEN FORM

Plaintiff Bitmanagement Software GmbH hereby requests the Court's authorization to present the direct sworn testimony of two of its trial witnesses, Peter Schickel and George L. Graff, in written form. The government has notified Bitmanagement that it opposes and intends to file a response in opposition to this request.

This request is pursuant to the Court's Trial Preparation Order, in which the Court stated:

The Court is committed to cost-effective methods of resolving and trying cases. The parties should consider whether direct testimony submitted in written form may be preferable. Under this procedure, parties submit their witnesses' affirmative testimony in writing in advance. The witnesses are then subject to cross-examination before the court in open court.

Trial Preparation Order (Dkt. 40), § 3.e.

Bitmanagement agrees with the Court's desire for efficient resolution of this case. Bitmanagement believes that presenting the direct testimony of Mr. Schickel and Mr. Graff would help effectuate this goal. Both witnesses would be available at trial for a brief introduction, live cross-examination, live direct testimony insofar as the Government intends to call Mr. Schickel to support its case-in-chief, and any necessary redirect testimony.

Mr. Schickel, who lives in Germany, is not a native English speaker. Accordingly, his live trial testimony, like his earlier deposition testimony, will have to be presented through an interpreter. Some of his testimony will concern technical matters involving the functionality and history of Bitmanagement's software. Under these circumstances, Bitmanagement believes that Mr. Schickel's direct testimony on Bitmanagement's behalf will be more efficiently presented, and more helpful to the Court, in written form, with a certified translation from German.

Likewise, Bitmanagement intends to call Mr. Graff as an expert witness regarding software licensing practices and calculation of damages. Mr. Graff has already submitted two written expert reports in this case. Much of his testimony will concern technical issues, software industry terminology, and mathematical calculations. Again, Bitmanagement believes that Mr. Graff's expert testimony will be more efficiently presented, and more helpful to the Court, in written form.

Bitmanagement proposes that it submit the written testimony of each witness to chambers, and serve it on Government counsel, on or before April 15, 2019, which is one week before the start of trial. This will give the Court and the Government sufficient time to review the testimony in advance of trial.

Dated: March 7, 2019

Respectfully Submitted,

/s/ Brent. J. Gurney

Brent J. Gurney

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